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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 44657
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR-2014-15930
)	
SCOTTY DALE TURNBULL,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Turnbull failed to show any basis for reversal of the district court's order denying his Rule 35 motion for reduction of sentence?

Turnbull Has Failed To Establish Any Basis For Reversal Of The District Court's Order Denying His Rule 35 Motion

Pursuant to a binding Rule 11 plea agreement, Turnbull pled guilty to second degree murder and to aggravated battery, the state dismissed a battery charge, and the parties stipulated to the imposition of consecutive sentences of 15 years fixed for second degree murder and 15 years indeterminate for aggravated battery. (R., pp.117-

18, 210-11, 242-43.) In accordance with the plea agreement, the district court imposed consecutive sentences of 15 years fixed for second degree murder and 15 years indeterminate for aggravated battery. (R., pp.245-49.) The court also ordered that the sentence for second degree murder run consecutively to “all other sentences currently being served; and, specifically Ada County Case No. CRFE-2012-0016142” (the sentence for which Turnbull was on felony probation when he committed the instant offenses). (R., p.246.) Turnbull filed a timely Rule 35 motion for reduction of sentence, which the district court denied. (R., pp.253-54, 269-72.) Turnbull filed a notice of appeal timely only from the district court’s order denying his Rule 35 motion. (R., pp.273-75.)

Mindful that he failed to provide any new or additional information in support of his Rule 35 motion, Turnbull nevertheless asserts that the district court abused its discretion by denying his Rule 35 request that the court reduce his sentence “by having it run concurrently with the sentence executed in the 2012 case.”¹ (Appellant’s brief, pp.3-6.) Turnbull has failed to establish any basis for reversal of the district court’s order denying his Rule 35 motion for reduction of sentence.

In State v. Huffman, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007), the Idaho Supreme Court observed that a Rule 35 motion “does not function as an appeal of a sentence.” The Court noted that where a sentence is within statutory limits, a Rule 35

¹ Because Turnbull stipulated to the imposition of consecutive sentences of 15 years fixed for second degree murder and 15 years indeterminate for aggravated battery, he is precluded by the invited error doctrine from challenging the length or the consecutive nature of those two sentences on appeal. See, e.g., State v. Carlson, 134 Idaho 389, 402, 3 P.3d 67, 80 (Ct. App. 2000) (A party is estopped, under the doctrine of invited error, from complaining that a ruling or action of the trial court that the party invited, consented to or acquiesced in was error).

motion is merely a request for leniency, which is reviewed for an abuse of discretion. Id. Thus, “[w]hen presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the Rule 35 motion.” Id. Absent the presentation of new evidence, “[a]n appeal from the denial of a Rule 35 motion cannot be used as a vehicle to review the underlying sentence.” Id. Accord State v. Adair, 145 Idaho 514, 516, 181 P.3d 440, 442 (2008).

Turnbull did not appeal the judgment of conviction in this case. On appeal, he merely argues that his sentence was excessive as originally imposed because the court ordered that it run consecutively to his sentence in the 2012 case and, therefore, the district court should have reduced his sentence pursuant to his Rule 35 motion. (Appellant’s brief, pp.4-6.) Because Turnbull presented no new evidence in support of his Rule 35 motion, he failed to demonstrate in the motion that his sentence was excessive. Having failed to make such a showing, he has failed to establish any basis for reversal of the district court’s order denying his Rule 35 motion.

Conclusion

The state respectfully requests this Court to affirm the district court's order denying Turnbull's Rule 35 motion for reduction of sentence.

DATED this 26th day of April, 2017.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 26th day of April, 2017, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

BEN P. MCGREEVY
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General